

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 1, 2017

IN RE: MYA V.

**Direct Appeal from the Juvenile Court for White County
No. 4265 Sammie E. Benningfield, Jr., Judge**

No. M2016-02401-COA-R3-PT

This appeal involves the termination of two parents' parental rights to their daughter. The trial court found by clear and convincing evidence that four grounds for termination existed with regard to the father and six grounds existed with regard to the mother. The trial court also found it to be in the child's best interest to terminate parental rights. Mother and Father appealed, raising the issues of whether grounds existed for termination and whether it was in the child's best interest to terminate. After reviewing the evidence, we reverse the trial court's finding regarding one ground for termination asserted against Mother, but we otherwise affirm the trial court's order as to Mother and affirm the termination of Mother's parental rights. Based on a jurisdictional defect, we dismiss the appeal as to Father.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Reversed in part, Affirmed in part and Remanded

BRANDON O. GIBSON, J., delivered the opinion of the court, in which RICHARD H. DINKINS, and THOMAS R. FRIERSON, II, JJ., joined.

Russell Clay Tribble, Cookeville, Tennessee, for the appellant, Tonya V.

Daniel James Barnes, Sparta, Tennessee, for the appellant, Scotty S.

Herbert H. Slatery III, Attorney General and Reporter, and Brian A. Pierce, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

Kelsy Austin Miller, *Guardian ad Litem*.

OPINION

I. BACKGROUND AND PROCEDURAL HISTORY

Mya V.¹(the “Child”) was born in August 2012 to Tonya V. (“Mother”) and Scotty S. (“Father”). Father was not married to Mother or listed on the Child’s birth certificate but lived openly with Mother as the Child’s father when he was not incarcerated. The Child also has an older brother, who was removed from Mother’s custody in 2011 because of Mother’s substance abuse issues. Mother was never able to regain custody of the boy, and he now lives with a maternal aunt.

The Child was placed in the custody of the State of Tennessee Department of Children’s Services (“DCS”) and adjudicated to be dependent and neglected in July 2014 after Mother’s arrest. Mother was charged with public intoxication, theft of property, and child abuse/neglect after being arrested at a Wal-Mart with unpaid items and several different drugs in her purse. The Child was present at the time of Mother’s arrest. While Mother was in jail, she was convicted of various drug paraphernalia and distribution charges, along with shoplifting. DCS contacted her during this time and informed her of the steps necessary to regain custody of the Child, who was in foster care pursuant to a permanency plan. In furtherance of one of those steps, Mother was to contact DCS upon her release to arrange a stay at an inpatient drug rehabilitation facility, which she did. During her stay, she successfully completed the facility’s program. However, Mother returned home and started spending time with old friends with whom she had used drugs in the past. She relapsed.

In January 2015, Mother violated her probation by failing to submit to a drug screen, along with failing to pay court costs and supervision fees. She served 30 days and was released. However, she violated probation again in June and went “on the run.” She was arrested on the probation violation on October 21, 2015, and was sentenced to 90 days incarceration. Mother violated her probation again in January 2016 and was sentenced to serve the remainder of her sentence. She also faced new aggravated assault charges, which threatened to delay her release date of January 2017.

Like Mother, Father has had numerous criminal charges. In December 2011, Father was arrested for evading arrest and subsequently violated his probation on that charge in July of the following year. He was incarcerated again in March 2015 for possession of stolen property and in October 2015 for evading arrest and theft of property. While incarcerated, both parents met with DCS regarding the necessary steps

¹In cases involving a minor child, it is this Court’s policy to redact names in order to protect the child’s identity. In this case, in order to preserve both clarity and anonymity of the child, we will redact the names of the parents and will refer to them by their given names and the first letter of their surnames.

to regain custody of the Child. DCS established a permanency plan for each parent, which included steps like completing parenting classes and establishing safe housing. Each parent also knew they could establish visitation with the Child through the DCS agent and did so at least once.

In May 2016, DCS filed a petition to terminate both Mother's and Father's parental rights based on the statutory grounds of willful failure to support, willful failure to visit, exhibiting a wanton disregard for the child's well-being, substantial noncompliance with the permanency plan, failure to provide a suitable home, and the persistence of conditions that could subject the child to further neglect or abuse. After a trial on the matter, the court entered its order on November 17, 2016. The court terminated both parents' rights on the statutory grounds of willful failure to support, willful failure to visit, exhibiting a wanton disregard for the child's well-being, and substantial noncompliance with the permanency plan. Mother's rights were also terminated for failure to establish a suitable home and the persistence of conditions that could subject the child to further neglect or abuse. The court also found termination was in the Child's best interest. Mother timely filed a notice of appeal on November 30, 2016. On December 19, 2016, Father filed a timely Notice of Appeal.

II. ISSUES PRESENTED

Mother presents the following issues on appeal:

1. Whether the trial court erred in finding that the grounds for termination of [] parental rights were supported by clear and convincing evidence; and
2. Whether the trial court erred in finding that termination of [] parental rights was in the child's best interest.

On April 26, 2017, a month after DCS filed its appellee's brief, Father filed a "Motion to Join Appellate Brief," seeking to join in Mother's appellate brief. Father raises no issues and makes no argument in his motion. Mother's counsel did not oppose his motion, and DCS filed no response.

III. STANDARD OF REVIEW

A biological parent's right to care for his or her child is of extreme importance. However, this right may be relinquished in cases where the parent has abandoned it or has engaged in conduct requiring its termination. *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004). In a case of parental termination, a court's analysis is two-fold.

See Tenn. Code Ann. § 36-1-113. First, the petitioner must prove the existence of at least one statutory ground for termination. Tenn. Code Ann. § 36-1-113(g); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010). Then, the petitioner must prove that termination of parental rights is in the best interest of the child, taking into consideration statutory and other relevant factors. Tenn. Code Ann. § 36-1-113(i); *In re Jayvien O.*, No. W2015-02268-COA-R3-PT, 2016 WL 3268683, at *9 (Tenn. Ct. App. June 7, 2016) (*no perm. app. filed*). Because of the fundamental rights at stake, the standard of proof is heightened to require clear and convincing evidence of these two elements before termination is permissible. Tenn. Code Ann. § 36-1-113(c); *In re Carrington H.*, 483 S.W.3d 507, 522 (2016).

An appellate court is required to review a trial court's findings of fact *de novo* with a presumption of correctness. Tenn. R. App. P. 13(d); *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009). However, the trial court's determination that the evidence sufficiently supports termination is a conclusion of law, which appellate courts review *de novo* without a presumption of correctness. *In re M.L.P.*, 281 S.W.3d at 393.

Because of the fundamental parental rights at stake in parental termination cases, the Tennessee Supreme Court has held, “[I]n an appeal from an order terminating parental rights the Court of Appeals must review the trial court's findings as to each ground for termination and as to whether termination is in the child's best interests, regardless of whether the parent challenges these findings on appeal.” *In re Carrington H.*, 483 S.W.3d at 525-26. As an initial matter, we must note the woeful deficiencies in Mother's appellate brief and the complete lack of a separate argument on Father's behalf. The argument section of Mother's brief, in its entirety, states:

A party seeking to terminate parental rights must prove both the existence of one of the statutory grounds for termination and that termination is in the child's best interest. *T.C.A. § 36-1-113(c)*. Both the grounds for termination and the best interest determinations must be supported and established by clear and convincing evidence. *T.C.A. § 36-1-113(c) (1)*. The trial court's ruling that the evidence sufficiently supports termination of parental rights is a conclusion of law, which appellate courts review *de novo* with no presumption of correctness. *In re Carrington H.*, 483 S.W.3d 507, 523-24 (Tenn.2016).

In this case, it is [Mother's] position that the Department of Children's Services failed to establish by clear and convincing evidence that there are grounds to terminate her parental rights, and that the termination is in the child's best interest. [Mother] is simply requesting the *de novo* appellate review of the record and Juvenile Court findings to which

she is entitled.

Mother's brief never even mentions which grounds for termination are involved in this case or the best interest factors relied upon by the trial court. Other than the passing reference to *Carrington* and Tennessee Code Annotated section 36-1-113(c), quoted above, Mother cites no caselaw, and she provides no citations to the record in her argument. Tennessee Rule of Appellate Procedure 27(a) requires an appellant's brief to include an argument that sets forth "the contentions of the appellant with respect to the issues presented, and the reasons therefore, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record" Tenn. R. App. P. 27(a)(7)(A). Father filed only a motion seeking to join Mother's deficient brief.

In *In re Carrington H.*, the Tennessee Supreme Court specifically held that "the Court of Appeals must review the trial court's findings as to each ground for termination and as to whether termination is in the child's best interests, regardless of whether the parent challenges these findings on appeal." *In re Carrington H.*, 483 S.W.3d at 525-26. While the process to be applied on appeal in parental termination actions is clearly established in *In re Carrington H.*, the appellants in this case stretch the supreme court's intention to its outer limit. The supreme court expressly recognized that it had "no desire to encourage attorneys to raise frivolous issues in any appeal" and no desire "to prolong the resolution of parental termination proceedings." *Id.* at 525. Interestingly, the supreme court also added that "[t]o aid in fulfilling this obligation, the Court of Appeals may adopt a rule requiring parents to brief these issues in every appeal." *Id.* at 526 n.16. To date, this Court has not done so, and even had we, violations of such a rule would be difficult to sanction when the supreme court has stated unequivocally that "the Court of Appeals *must* review the trial court's findings as to each ground for termination and as to whether termination is in the child's best interests, *regardless of whether the parent challenges these findings on appeal.*" *Id.* at 525-26 (emphasis added).

As it is, we are obligated to perform a de novo review of the trial court's actions, although the appellants' disregard for the rules of this Court does not further "the important goal of concluding parental termination litigation as rapidly as possible 'consistent with fairness.'" *Id.* at 525 (internal citations omitted).

At the outset, we note that Father failed to sign his notice of appeal. Subsection (d) of Tennessee Code Annotated section 36-1-124 states: "Any notice of appeal filed in a termination of parental rights action shall be signed by the appellant." Recently, this Court determined that an appellant's failure to sign the notice of appeal in accordance with this statute "is a jurisdictional default" that requires dismissal of the appellant's appeal. *See In re Gabrielle W.*, No. E2016-02064-COA-R3-PT, 2017 WL 2954684, at *4

(Tenn. Ct. App. July 11, 2017) (dismissing an appeal from a trial court's decision regarding termination of parental rights where Guardians failed to sign their notice of appeal). Therefore, we do not have jurisdiction over Father's appeal due to his failure to sign and hereby dismiss the appeal as to Father.

III. GROUNDS FOR TERMINATION

The trial court's termination of Mother's parental rights was premised on willful failure to support, willful failure to visit, wanton disregard for the child's well-being, substantial non-compliance with the permanency plan, failure to establish a suitable home, and the existence of persistent conditions that could subject the child to further neglect or abuse. We will examine these statutory grounds in turn, beginning with the trial court's finding of abandonment for willful failure to support.

Willful Failure to Support

Parental rights may be terminated for abandonment under Tennessee Code Annotated section 36-1-113(g)(1) when a parent willfully fails to support his or her child for four consecutive months. Such failure to support is willful when (1) the person is aware of his or her duty to support, (2) has the capacity to support, (3) makes no attempt to support, and (4) has no justifiable excuse for not providing support. *In re M.L.D.*, 182 S.W.3d 890, 896 (Tenn. Ct. App. 2005). In determining a parent's capacity to pay support, it is not enough for a petitioner to "simply prove that [the parent] was not disabled during the relevant timeframe" and therefore assume that he or she was capable of working and providing support. *In re Josephine E.M.C.*, No. E2013-02040-COA-R3-PT, 2014 WL 1515485 at *18 (Tenn. Ct. App. Apr. 17, 2014), *perm. app. denied* (Tenn. July 23, 2014). The petitioner has the burden of proving a parent's income and ability to pay when establishing willful failure to support. *In re Anna B.*, No. M2016-00694-COA-R3-PT, 2017 WL 436510, at *7 (Tenn. Ct. App. Feb. 1, 2017) (*no perm. app. filed*). This can be established through evidence, showing the parent was able to support the child. *In re Noah B.B.*, E2014-01676-COA-R3-PT, 2015 WL 1186018 at *9 (Tenn. Ct. App. Mar. 12, 2015) (*no perm. app. filed*). Relevant to the case at hand, in situations where the parent was incarcerated when the petition was filed, the Court must look at the four consecutive months prior to the parent's incarceration to determine whether he or she has willfully failed to support a child. Tenn. Code Ann. § 36-1-102(1)(A)(iv).

Mother was incarcerated at the time the petition for termination of parental rights was filed in May 2016. Mother began her incarceration on October 21, 2015, in the White County jail before being moved to the Van Buren County jail, where she was incarcerated at the time DCS filed the petition. Therefore, the applicable period of time for Mother's failure to support would be June 21 to October 20, 2015. *See In re Jacob*

C.H., No. E2013-00587-COA-R3-PT, 2014 WL 689085, at *6 (Tenn. Ct. App. Feb. 20, 2014) (explaining the calculation of the four-month period).

The trial court found that clear and convincing evidence was presented to demonstrate that Mother abandoned the Child by willfully failing to support. However, after reviewing the record, we cannot agree. The trial court determined that Mother was “able bodied and capable of working” to provide support and concluded that was enough to establish willful failure to support, but DCS offered no proof as to her income or assets to establish an ability to pay. If anything, the proof suggests that Mother did not have the ability to pay. When questioned at trial, Mother testified to not having a job from June 20, 2015 to October 20, 2015, (including the relevant four-month period) and relying on friends for her needs. Because DCS did not meet its burden of proof, we must reverse the trial court’s finding that Mother willfully failed to support the Child.

Willful Failure to Visit

Parental rights may also be terminated for abandonment when there has been a willful failure to visit. Tenn. Code Ann. § 36-1-102(1)(A)(iv). Failure to visit is willful when a parent knows of his or her duty to visit, has the capacity to do so, makes no attempt to do so, and does not have a justifiable excuse for not doing so. *In re Audrey S.*, 182 S.W. 3d at 864. Like willful failure to support, if a parent is incarcerated, the Court must look at the four consecutive months prior to his or her incarceration when determining willful failure to visit. Tenn. Code Ann. § 36-1-102(1)(A)(iv).

The trial court found that Mother had abandoned the child through willful failure to visit, and after reviewing the evidence, we agree. As previously stated, Mother was incarcerated at the time this petition was filed, and Mother’s applicable four month time period was June 21 to October 20, 2015. Mother was aware of her duty to visit the Child and knew how to arrange visits through DCS, yet failed to visit the Child during the four month period.

Mother’s last visit with the Child was on June 11, 2015. During the relevant four month period, Mother made no attempt to visit with the Child. The only excuse she could offer during trial for not visiting was being “on the run” after violating the terms of her probation. Evading arrest is not a justifiable excuse for failing to visit. Therefore, because she knew of her duty to visit and could provide no justifiable excuse for failing to do so, we affirm the trial court’s finding that this ground was sufficiently proven.

Exhibiting a Wanton Disregard for the Child’s Welfare

Exhibiting a wanton disregard for the child’s welfare prior to incarceration also

establishes a ground for termination of parental rights. Tenn. Code Ann. § 36-1-102(1)(A)(iv). This definition of abandonment applies when the parent is incarcerated at the time the petition to terminate parental rights is filed or in the four months immediately preceding the filing of the petition. *Id.* Such incarceration serves as a triggering mechanism that allows a court to determine if the behavior behind the incarceration is “part of a broader pattern of conduct that renders the parent unfit or poses a risk of substantial harm to the child.” *In re Sidney L.*, No.W2014-00779-COA-R3-PT, 2014 WL 6453549 at *3 (Tenn. Ct. App. Nov. 18, 2014). This Court has consistently held that “probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can, alone or in combination, constitute conduct that exhibits a wanton disregard for the welfare of a child.” *In re Audrey S.*, 182 S.W.3d at 867-68 (citing *State Dep’t of Children’s Servs. v. J.M.F.*, No. E2003-03081-COA-R3-PT, 2005 WL 94465, at *7-8 (Tenn. Ct. App. Jan. 11, 2005), *perm. app. denied* (Tenn. Mar. 21, 2005); *In re C. LaC.*, No. M2003-02164-COA-R3-PT, 2004 WL 533937, at *7 (Tenn. Ct. App. Mar. 17, 2004) (*no perm. app. filed*); *In re C.T.S.*, 156 S.W.3d 18, 25 (Tenn. Ct. App. 2004); *In re C.W.W.*, 37 S.W.3d 467, 474-75 (Tenn. Ct. App. 2005)).

The trial court found Mother exhibited a wanton disregard for the Child’s welfare, specifically because of her “continued drug abuse,” failure to follow the rules of her probation “which resulted in a Violation of Probation charge that she failed to address,” and new criminal charges and convictions constituted conduct exhibiting a wanton disregard for the Child’s welfare. This broad pattern of criminal behavior and drug abuse displayed by Mother establishes the wanton disregard contemplated by the statute. *See State, Dep’t of Children’s Servs. v. Hood*, 338 S.W.3d 917, 926 (Tenn. Ct. App. 2009) (“a parent’s poor judgment and bad acts that affect the children constitute a wanton disregard for the welfare of the children”). Therefore, we affirm the trial court’s termination on this ground.

Substantial Noncompliance with the Permanency Plan

A court may also terminate parental rights when a parent is in “substantial noncompliance . . . with the statement of responsibilities in [his or her] permanency plan.” Tenn. Code Ann. § 36-1-113(g)(2). To terminate parental rights on this ground, the court must first find the plan’s requirements are “reasonable and related to conditions that necessitate foster care placement.” *In re Hannah H.*, No. E2013-01211-COA-R3-PT, 2014 WL 2587397, at *10 (Tenn. Ct. App. June 10, 2014), *perm. app. denied* (Tenn. Sept. 14, 2014). Then, the court must find the parent’s noncompliance to be substantial. *Id.* “[N]oncompliance should be measured by both the degree of noncompliance and the weight assigned to that requirement.” *In re Valentine*, 79 S.W.3d 539, 548 (Tenn. Ct. App. 2005). However, termination based on noncompliance should take into

consideration the efforts made by the parent towards compliance with the plan rather than focusing solely on whether the parent achieved the plan's desired outcome. *In re Aiden R.*, No. E2015-01799-COA-R3-PT, 2016 WL 3564313, at *9 (Tenn. Ct. App. June 23, 2016) (*no perm. app. filed*) (citing *In re B.D.*, No. M2008-01174-COA-R3-CV, 2009 WL 528922, at *8 (Tenn. Ct. App. Mar. 2, 2009), *perm. app. denied* (Tenn. May 18, 2009)).

The trial court found Mother to be in substantial noncompliance with her permanency plans. Initially, the permanency plans were established in October 2014 and February 2015 with the goal of returning the Child to Mother's custody. Both of these plans were deemed "reasonable, necessary, and in the best interest of the child." However, the revised permanency plan dated August 7, 2015, had a goal of adoption and was also deemed "reasonable, necessary, and in the best interest of the child" on July 18, 2016.

The trial court correctly found that major goals of the permanency plans were for the parents to abstain from drug use and avoid incarceration. However, in weighing the degree of noncompliance and the importance of the goal, it failed to look at whether Mother had made sufficient efforts towards compliance with the plan. We will review the record to see if she has made such efforts.

With respect to Mother's plan, some of the requirements were to avoid probation violations, achieve and maintain sobriety, resolve legal issues, not obtain new charges, obtain and maintain a legal means of income, and obtain and maintain safe housing. Since the initial permanency plan was established in 2014, Mother sought treatment for her drug problem and successfully completed a rehabilitation program. She also found employment after being released from treatment by doing small jobs, "remodel[ing] houses" and such. She also completed parenting classes, an anger management course, and a mental health assessment as part of her six-week rehabilitation program, all of which were steps towards completing the permanency plan. Despite her progress, Mother relapsed, violated the terms of her probation, and obtained new charges, contrary to the goals of her permanency plan.

This Court has held that "outcome achievement is not the measure of compliance." *In re B.D.*, 2009 WL 528922, at *11. When considering this ground for termination, "[o]ur focus is on the parent's efforts to comply with the plan, not the achievement of the plan's desired outcomes." *In re Aiden R.*, 2016 WL 3564313, at *9 (citing *In re B.D.*, 2009 WL 528922, at *8). We recognize Mother's early accomplishments towards compliance. However, Mother's early efforts towards compliance are called into question by her subsequent non-compliance. As previously mentioned, she violated her probation repeatedly, incurred additional aggravated assault charges, failed to submit to drug screening, and "went on the run" rather than maintaining contact with DCS and

working toward the goals of her permanency plan. These actions indicate a lack of substantial effort towards compliance with her permanency plan, and as such, we must affirm the trial court's finding on this ground.

Failure to Establish a Suitable Home

Parental rights may also be terminated when the parent has failed to establish a suitable home for the child. Abandonment by failure to provide a suitable home occurs when:

The child has been removed from the home of the parent or parents or the guardian or guardians as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date.

Tenn. Code Ann. § 36-1-102(1)(A)(ii). A suitable home in the context of this ground for parental termination requires a safe, stable environment and the presence of a caregiver that can meet the child's needs. *In re James V.*, No. M2016-01575-COA-R3-PT, 2017 WL 2365010, at *5 (Tenn. Ct. App. May 31, 2017).

The trial court found that Mother failed to make reasonable efforts to establish a suitable home pursuant to Tennessee Code Annotated section 36-1-102(1)(A)(ii), and after reviewing the record, we must agree. The Child was removed from Mother's care after Mother was arrested for shoplifting from a Wal-Mart store. The trial court found that Mother failed to make reasonable efforts to provide a safe and stable environment for the Child. Again, while Mother made some early efforts to better herself by entering the six-week rehabilitation program, once it ended, she exhibited a lack of concern for the Child to the degree that it is unlikely she will be able to return to Mother's custody at an early date. Mother's relapse and decision to go "on the run" instead of correcting her drug

addiction and legal problems demonstrate a substantial lack of concern for her child. Mother testified to needing at least two years to be able to properly care for the Child. It is clear that Mother will not be able to provide a safe and stable environment for the Child at any point in the near future, and we must affirm the trial court's finding on this ground.

Persistent Conditions

Grounds for termination of parental rights also exist when there are persistent conditions that could subject the child to further neglect or abuse present in the home. Tennessee Code Annotated section 36-1-113(g)(3) states that persistent conditions are present when the child has been removed from the parent's custody by order of a court for a period of six months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent or parents or the guardian or guardians, still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or parents or the guardian or guardians in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn. Code Ann. § 36-1-113(g)(3)(A)-(C). Each of these elements must be proven by clear and convincing evidence. *In re Valentine*, 79 S.W.3d at 550. Termination on this ground prevents a child from lingering in uncertainty as a foster child if his or her parent cannot demonstrate an ability to provide a safe and caring environment for the child within a reasonable time. *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *20 (Tenn. Ct. App. Oct. 13, 2008). "An essential prerequisite to establishing persistence of conditions is evidence of a 'prior court order removing the child from the parent's home . . . based on a judicial finding of dependency, neglect or abuse.'" *In re Aiden R.*, 2016 WL 3564313, at *9 (quoting *In re Audrey S.*, 182 S.W.3d at 874).

The trial court found this ground for termination against Mother, and we must agree. The Child was removed from Mother's custody by the requisite court order in 2014. Furthermore, at the time of trial, Mother was still a drug addict and admitted to

needing further treatment at an inpatient facility. Even if Mother were to successfully complete rehabilitation, she testified to needing at least two years before she could properly care for the Child, and there is no guarantee that Mother will not relapse, as she has before. It is clear that the Child will not be able to safely return to Mother's custody within a reasonable time. Also, the Child is currently in the care of a foster family that wishes to adopt, and to delay this integration into a permanent home would be unfair to the Child, who needs stability. For these reasons, we affirm the trial court's termination of Mother's parental rights on this ground.

IV. BEST INTERESTS OF THE CHILD

After concluding the trial court properly found at least one ground for termination, we must now review the trial court's finding that termination of Mother's parental rights is in the Child's best interests. Tennessee Code Annotated section 36-1-113(i) sets out a list of factors that are relevant in a best-interests analysis. This list is not exhaustive, and a court does not have to find the existence of every one before termination. *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). "Facts relevant to a child's best interests need only be established by a preponderance of the evidence, although [the petitioner] must establish that the combined weight of the proven facts amounts to clear and convincing evidence that termination is in the child's best interests." *In re Carrington H.*, 483 S.W.3d at 535 (citing *In re Kaliyah*, 455 S.W.3d 533, 555 (Tenn. 2015)). This determination is to be made from "the child's perspective and not the parent's." *In re Arteria H.*, 326 S.W.3d 167, 182 (Tenn. Ct. App. 2010) (citing *White v. Moody*, 171 S.W.3d 187, 194 (Tenn.Ct.App.2004)).

The trial court found termination of parental rights to be in the Child's best interest because Mother has not made an adjustment of circumstances, conduct, or conditions to make it safe for the Child to be in her custody, maintained regular visitation or other contact with the Child, or paid child support consistently. Other factors the trial court found to support termination were that a change of caretaker and physical environment was likely to have a negative impact on the Child's emotional, psychological, and/or medical condition, the Child had already developed a close bond with her caretakers, and the Child's foster parents wanted to adopt her. After a thorough review of the record, we must agree with the trial court's determination regarding best interests.

V. CONCLUSION

For the aforementioned reasons, based on a jurisdictional defect, we dismiss the appeal as to Father. We reverse the trial court's order in regard to willful failure to support as to Mother. We affirm the trial court's order with regard to willful failure to visit, wanton disregard for the Child's well-being, persistence of conditions, substantial

noncompliance, and failure to establish a suitable home; and we affirm the trial court's order terminating Mother's parental rights. Costs of this appeal are taxed to the appellants, Tonya V. and Scotty S. Because Tonya V. and Scotty S. are proceeding *in forma pauperis* in this appeal, execution may issue for costs if necessary.

BRANDON O. GIBSON, JUDGE